

## Protection of Children as Perpetrators of Criminal Act Stimulated by Pornography Based on Indonesian Laws

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### ABSTRACT

This study aims to find out what laws and regulations in Indonesia protect children as criminals due to being stimulated by pornography. This research uses normative legal research methods. The data used in this study are primary data and secondary data. The data analysis technique used is qualitative data analysis techniques. The study results indicate that several laws in Indonesia protect children as perpetrators of criminal act due to being stimulated by pornography. In this case, it consists of Law No. 4 of 1979, Law No. 39 of 1999, Law No. 17 of 2016, Law No. 44 of 2008, and Law No. 11 of 2012. This can be seen from all the considerations of the Panel of Juvenile Judges in deciding the criminal case of sexual intercourse committed by the perpetrator YY against the victim of FH. Therefore, it is hoped that law enforcers regarding the handling of children who commit criminal acts resulting from being stimulated by pornography can distinguish their treatment from criminal acts in general, such as theft. In addition, children who commit crimes due to being stimulated by pornography must also be accompanied by a psychologist to ensure that the child's mental condition can return to normal. Assistance by religious leaders must also be done so that children can return to the right path and be blessed by God.

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## 1. INTRODUCTION

Pornography is one of the social problems that are rife in today's era of virtuality.<sup>1</sup> As for pornography in the Oxford Learner's Dictionaries explanation, that:

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<sup>1</sup> Azimah Soebagijo. (2008). *Pornografi Dilarang Tapi Dicari*. Jakarta: CV. Gema Insani Press, p. 21.

*"Magazines, DVDs, websites, etc. that describe or show naked people and sexual acts in order to make people feel sexually excited, especially in a way that many other people find offensive."*

Hasanudin Aco describes in his article, that *"since the coronavirus pandemic, access to one of the world's pornographic sites, 'PornHub', has increased, according to a report released by PornHub, last March"*.<sup>2</sup>

Furthermore, a search on SimilarWeb<sup>3</sup> in November 2020 showed that the "PornHub" site had a total of 3,311,000,000 visits. Each user or viewer, or site visitor shows pages per visit of seven to 8 videos with an average visit duration for each video of 8 minutes 53 seconds. The bounce rate of visitors to the "PornHub" site was 36.54% of the total visitors during November 2020. Furthermore, the website is the most accessible pornographic medium. Based on traffic sources, users or viewers or visitors use several ways to access the "PornHub" site during November 2020, including:

1. Direct access to the site is 57.91%;
2. Referrals are 5.90%;
3. Search engines are 33.45%;
4. Social networks are 2.49%;
5. Mail are 0.21%; and
6. Display advertising are 0.04%.

From the description above, it can be concluded that anyone, including underage viewers, is straightforward to access pornography.<sup>4</sup> Therefore, the Government established Law of the Republic of Indonesia Number 44 of 2008 on Pornography (hereinafter referred to as Law No. 44 of 2008) to address the effects of pornography circulation.

Regarding the effect on the underage audience, the psychological impact is worse than for the adult audience.<sup>5</sup> The aspects that distinguish children from adults include:

1. Unstable thoughts and emotions;
2. Children are still looking for identity and tend to imitate the behavior of those around them; and
3. Have a high curiosity and curiosity.

Therefore, the government formed a series of laws and regulations to protect children. In addition to the role of the government, the role of parents is also needed in anticipating the circulation of pornography into shows for children.<sup>6</sup> However, in some

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<sup>2</sup> Hasanudin Aco. (2020, 7 July). Survei: Pengunjung Situs Porno Melonjak Saat Karyawan Bekerja dari Rumah Karena Covid-19. *TribunNews.com*. Retrieved December 31, 2020.

<sup>3</sup> A practical tool to check website traffic, please access it at [www.similarweb.com](http://www.similarweb.com).

<sup>4</sup> Diana Imawati & Meyritha Trifina Sari. (2019). Studi Kasus Kecanduan Pornografi pada Remaja. *Motiva: Jurnal Psikologi, Universitas 17 Agustus 1945 Samarinda*, 1(2), p. 57.

<sup>5</sup> Shania Nurul Syarifa & Catur Nugroho. (2020). Penerimaan Pesan Seks Pranikah oleh Penonton dalam Film Dua Garis Biru. *JCommsci (Journal Of Media and Communication Science), Universitas Mataram*, 3(2), p. 104.

<sup>6</sup> Jaja Suteja & Muhsin Riyadi. (2019). Revitalisasi Peran Orang Tua dan Guru dalam Memberikan Pendidikan Seks pada Anak. *Equalita: Jurnal Studi Gender dan Anak, Institut Agama Islam Negeri Syekh Nurjati*, 1(1), p. 49.

cases, parents who like to access pornographic sites without realizing that the device used to access these sites stores history can be reaccessed at any time by their children.<sup>7</sup>

As explained earlier, children are more vulnerable to the psychological effects of pornography, given that they do not yet have mature thoughts and emotions. This is evidenced by the many criminal cases of rape or obscene acts committed by children after watching pornography. One example is child molestation that occurred in Bekasi on August 28, 2019, with the motive of not being able to hold back because of watching pornographic videos.<sup>8</sup>

Based on the description above, it can be judged that pornography has a tremendous negative impact on children, especially related to legal issues. Two statuses will ultimately be attached to the child, including:<sup>9</sup>

1. Children as perpetrators of criminal act; and
2. Children are victims of being stimulated by pornography.

This study aims to find out what laws and regulations in Indonesia protect children as criminals as a result of being stimulated by pornography. This research aims to provide understanding to children and parents regarding the negative impact of being stimulated by pornography.

## 2. METHOD

This study uses a normative legal research method, a scientific research procedure, to find the truth from the normative side.<sup>10</sup> In legal research, this type of research is conducted to generate new arguments, theories, or concepts as prescriptions in solving the problems at hand.<sup>11</sup> The approach used in this research is a case study approach, which is carried out by analyzing cases that are related to the problems faced, have become court decisions, and have permanent legal force. The focus of the study in the case approach is the *ratio decidendi* or *reasoning*, namely the court's consideration of the decision.<sup>12</sup> The types and sources of data used in this study are as follows: (1) Primary data, namely data obtained by a researcher directly from the source without an intermediary (directly from the object), in this study in the form of the Decision of the Malili District Court No. 2/Pid.Sus-Anak/2018/PN Mll; (2) Secondary data, namely data obtained by researchers indirectly from the source (object of research), but through other sources,<sup>13</sup> in this study in library materials related to research problems and have coherence with primary data.

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<sup>7</sup> S. Bakti Istiyanto. (2016). Telepon Genggam dan Perubahan Sosial: Studi Kasus Dampak Negatif Media Komunikasi dan Informasi Bagi Anak-Anak di Kelurahan Bobosan Purwokerto Kabupaten Banyumas. *Jurnal Komunikasi Ikatan Sarjana Komunikasi Indonesia*, 1(1), p. 62.

<sup>8</sup> Robertus Belarminus. (2019, 4 September). Ini Motif Pelaku Pencabulan Bocah 10 Tahun di Bogor. *Kompas.com*. Retrieved December 31, 2020.

<sup>9</sup> Mohammad Audrian. (2011). "Tinjauan Yuridis dan Viktimologis Anak sebagai Pelaku Tindak Pidana Perbuatan Cabul karena Terstimulasi oleh Pornografi". *Skripsi*. Fakultas Hukum, Universitas Indonesia, Depok, p. 5.

<sup>10</sup> Sarah Sarmila Begem, Nurul Qamar, & Hamza Baharuddin. (2019). Sistem Hukum Penyelesaian Pelanggaran Hak Asasi Manusia (HAM) Berat Melalui Mahkamah Pidana Internasional. *SIGn Jurnal Hukum*, CV. Social Politic Genius (SIGn), 1(1), p. 3.

<sup>11</sup> Peter Mahmud Marzuki. (2013). *Penelitian Hukum*. Jakarta: Kencana Prenada Media Group, p. 56.

<sup>12</sup> Naomi Sari Kristiani Harefa, et al. (2020). Dasar Pertimbangan Hakim terhadap Tindak Pidana Korupsi yang Dilakukan oleh Pegawai Negeri Sipil (PNS): Studi Kasus Putusan Pengadilan Negeri Medan Nomor: 73/Pid.Sus-TPK/2018/PN.Mdn. *SIGn Jurnal Hukum*, CV. Social Politic Genius (SIGn), 2(1), pp. 33-34.

<sup>13</sup> *Ibid*.

The data collected in this study used techniques and instruments, including the following: (1) Document research, namely collecting data to obtain primary data, which in this research is to examine the Decision of the Malili District Court No. 2/Pid.Sus-Anak/2018/PN Mll. (2) Library research, namely collecting data to obtain secondary data, which in this study is in the form of library materials such as books, dictionaries, journals, laws and regulations in the form of hard copies or soft copies.

The data collected is then analyzed using qualitative data analysis techniques, namely analysis that focuses on the presentation of meaning, description, clarification, and placement of data in their respective contexts, as well as describing them argumentatively to answer the objectives of this study.<sup>14</sup>

### 3. RESULTS AND DISCUSSION

#### 3.1. Pornography and Criminal Act

As a country consisting of various tribes and cultures, Indonesia certainly has various moral values. Therefore, the definition of pornography in Indonesia may vary depending on which ethnicity and culture views pornography. This is also supported by the opinion of Neng Djubaedah, which states that:<sup>15</sup>

*"The definition of pornography in Indonesia can be different because it is influenced by the characteristics of the population based on their place of residence, religion, and customs."*

Even though they have diversity in understanding a value, they must still be guided by the laws and regulations, especially those related to the lives of all Indonesian people. Based on Article 1 number 1 of Law No. 44 of 2008, explains that:

*"Pornography is pictures, sketches, illustrations, photos, writings, voices, sounds, moving pictures, animations, cartoons, conversations, gestures, or other forms of messages through various forms of communication media and/or public performances, which contain obscenity or sexual exploitation that violates the norms of decency in the society."*

From the above provisions, pornography can be interpreted based on its purpose, namely to provoke sexual satisfaction for anyone who witnesses it in that social environment. Furthermore, pornography is a crime that also impacts other crimes such as fornication, rape, extortion, and even murder. Therefore, various approaches are needed in dealing with pornographic crimes.

##### 3.1.1. Criminology Approach

Examining the relationship between pornography and crime based on a criminological approach, the concept of differential association is one of the analytical tools used to explain how a person can commit a crime. Differential association, as explained by Edwin Hardin Sutherland, that:<sup>16</sup>

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<sup>14</sup> Sanafiah Faisal. (1995). *Format-Format Penelitian Sosial: Dasar-Dasar dan Aplikasi*. Jakarta: PT. Raja Grafindo Persada, p. 256.

<sup>15</sup> Neng Djubaedah. (2003). *Pornografi & Pornoaksi: Ditinjau dari Hukum Islam*. Jakarta: Kencana Prenada Media Group, p. 137.

<sup>16</sup> Muhammad Kamal. (2019). *Human Trafficking: Penanggulangan Tindak Pidana Perdagangan Manusia di Indonesia*. Makassar: CV. Social Politic Genius (SIGn), p. 37.

*"Criminal acts occur as a result of learning in the social environment. This means that everyone can learn all patterns of behavior in any way. Thus, the difference between criminals is influenced by who, what, and how the crime was studied."*

As for one of the fundamental propositions of the reconstruction of Edwin Hardin Sutherland's thought related to differential association, namely:<sup>17</sup>

*"While criminal behavior is an expression of general needs and values, it is not explained by those general needs and values, since noncriminal behavior is an expression of the same needs and values."*

The proposition above is very relevant to the impact of pornography which causes a person to commit a crime. For example, the crime of fornication and rape have the same main goal, namely sexual satisfaction will always be considered non-existent or always considered wrong. So that to obtain sexual satisfaction, there are non-criminal actions that can be carried out, namely through the institution of marriage.

From the exposure of differential associations, it can be concluded that the crime of fornication and rape occurs due to a person's learning from watching pornographic programs regularly. Furthermore, a person will commit a crime if he considers the advantages and disadvantages he gets.

### **.1.2. Psychological Approach**

Examining the relationship between pornography and criminal acts based on a psychological approach, the concept of psychoanalysis is one of the analytical tools used to explain how a person can commit a crime. Psychoanalysis, as explained by Sigmund Freud, that:<sup>18</sup>

*"Every individual wants always to prioritize his desire or id. At the same time, a social system or superego pattern exists to suppress individual desires, which are indicated to disrupt stability and order in society. From this conflict, the ego emerges to negotiate between the desires of the id and the restraints of the superego within the individual."*

In the development of psychoanalysis, Albert Armin Ehrenzweig reconstructed the thought of Sigmund Freud and presented the perspective of psychoanalytic jurisprudence.<sup>19</sup> The principles of Albert Armin Ehrenzweig's thinking in explaining how a person can commit a crime, among others, are:<sup>20</sup>

*"The developmental phase of childhood can be understood as shaping the actions and behavior of adults. As for the crime, it can be understood from the description of the interaction pattern and the effort to trace the unconscious motives of the perpetrator. So that psychological conflict is a problem from one and/or all phases of individual development to be channeled or represented through criminal acts."*

From the explanation of psychoanalysis and the principles of thought above, it is very relevant to pornography, which causes a person to commit a crime. For example, the crime of sexual immorality and rape occurs due to the stimulus from pornographic

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<sup>17</sup> Edwin H. Sutherland & Donald R. Cressey. (1974). *Principles of Criminology*. New York: Lippincott Company, p. 82.

<sup>18</sup> Sigmund Freud. (1997). *Sexuality and The Psychology of Love*. New York: Simon & Schuster, Inc., p. 169.

<sup>19</sup> Albert Armin Ehrenzweig. (1977). *Law: A Personal View*. Leyden: A.W. Sijthoff, p. 13.

<sup>20</sup> *Ibid*.



shows regularly, where the shows are the activities of a married couple. Therefore, children who continue to receive stimuli from pornographic shows cause them to be unable to stem their desires to channel through criminal acts.

### 3.1.3. Clinical Approach

Examining the relationship between pornography and crime based on a clinical approach, the concept of neuropathology is one of the analytical tools used to explain how a person can commit a crime. Neuropathology, as described by Herbert C. Quay, that:<sup>21</sup>

*"Impulsivity in childhood and attention deficit disorder is associated with antisocial personality disorder, both of which are caused by biological abnormalities in central nervous system function."*

Furthermore, Donald L. Hilton develops an explanation of the problem of neurosis and links addiction problems with the effects of pornography, that:<sup>22</sup>

*"Pornography that enters the human brain through the sense of sight, namely the eyes, will continuously damage five parts of the brain, namely the orbitofrontal midfrontal, insula hippocampus temporal, nucleus accumbens, putumencingalute, and cerebellum."*

From the explanation above, neurosis causes physiological changes in the human body or, more precisely, changes in brain function. These changes make a person, especially children, unable to make plans, control their passions, make decisions, and various other brain executive roles as impulse controllers. This condition causes a person to lose his human nature and only act based on instincts, thus allowing criminal acts of fornication, rape, and even sexual incest.

### 3.1.4. Juridical Approach

It can be ascertained that there is a relationship between pornography and criminal acts, considering that pornography is a criminal act as based on Law No. 44 of 2008. There are several articles in the laws and regulations governing pornography other than Law No. 44 of 2008, among others, as follows.

Article 282 section (1) and section (2) of Law of the Republic of Indonesia Number 1 of 1960 on Amendment of the Criminal Code (hereinafter referred to as Law No. 1 of 1960), regulates that:

- (1) Any person who either disseminates, openly demonstrates or puts up a writing of which he knows the content or a portrait or object known to him to be offensive against decency, or produces, imports, conveys in transit, exports or has in store, or openly or by dissemination of a writing, unrequestedly offers or indicates that said writing, portrait or object is procurable, in order that it be disseminated, openly demonstrated or put up, shall be punished by a maximum imprisonment of one year and four months or a maximum fine of three thousand rupiahs.
- (2) Any person who disseminates, openly demonstrates or puts up a writing, a portrait or an object offensive to decency, or produces imports, conveys in transit,

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<sup>21</sup> Herbert C. Quay. (1965). Psychopathic Personality as Pathological Stimulation-Seeking. *American Journal of Psychiatry, American Psychiatric Association*, 122(2), pp. 180-183.

<sup>22</sup> Donald L. Hilton & Clark Watts. (2011). Pornography Addiction: A Neuroscience Perspective. *Surgical Neurology International*, 2(19), p. 1.

exports or has in store, or openly or by dissemination of a writing unrequestedly offers or indicates that said writing, portrait or object is procurable, in order that it be disseminated, openly demonstrated or put up, shall, if he has serious reasons for suspecting that the writing, portrait or object is offensive to decency, shall be punished by a maximum imprisonment of nine months or a maximum fine of three thousand rupiahs.

Article 27 section (1) of Law of the Republic of Indonesia Number 19 of 2016 on Amendment to Law Number 11 of 2008 on Electronic Information and Transactions, regulates that:

*"Every Person intentionally and without rights distribute and/or transmits and/or makes accessible Electronic Information and/or Electronic Documents that have contents that violate decency."*

Furthermore, several articles in the laws and regulations governing the relationship between the impact of pornography and criminal acts, especially fornication and rape, are as follows.

Article 293 section (1) of Law No. 1 of 1960, regulates that:

*"Any person who by gifts or promises of money or goods, abuse of dominance resulting from factual relationship or deceit, intentionally moves a minor of irreproachable conduct, whose minority he knows or reasonably should presume, to commit any obscene act with him or to tolerate such act, shall be punished by a maximum imprisonment of five years."*

Article 12 of Law No. 44 of 2008, regulates that *"everyone is prohibited from inviting, persuading, utilizing, allowing, abusing power or forcing children to use pornographic products or services"*.

Article 76D of Law of the Republic of Indonesia Number 17 of 2016 on Enactment of Government Regulation in Lieu of Law Number 1 of 2016 on the Second Amendment to Law Number 23 of 2002 on Child Protection Into Law (hereinafter referred to as Law No. 17 of 2016), regulates that *"everyone is prohibited from using violence or threats of violence to force the child to have intercourse with him or with other people"*.

Article 76E of Law No. 17 of 2016, regulates that:

*"Everyone is prohibited from using violence or threats of violence, coercing, deceiving, committing a series of lies, or persuading a child to commit or allow obscene acts to be carried out."*

Article 81 section (1) of Law No. 17 of 2016, regulates that:

*"Anyone who violates the provisions referred to in Article 76D shall be sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years, and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs)."*

After describing the four approaches above, it can be seen that there is a relationship between pornography and criminal acts, especially fornication and rape.

### 3.2. Analysis of the Consideration on the Panel of Juvenile Judges in Decision the Malili District Court No. 2/Pid.Sus-Anak/2018/PN MII

The Malili District Court held a special criminal case with No. 2/Pid.Sus-Anak/2018/PN MII related to a child's actions with the initials YY, 15 years old (since the trial began in 2018), a farmer, and having his address at Jalajja Village Burau District, East Luwu Regency. The victim is a child with the initials FH, five years old (since the trial began in 2018).

#### 3.2.1. Chronology of Events

It started when the perpetrator YY came to FH victim and wanted to take her to a rambutan garden. At that time, the victim of FH was playing with the witness's child with the initials AR, the witness's child with the initials AC, and the witness's child with the initials AG, so perpetrator YY invited them all. Arriving at the garden, perpetrator YY picked rambutan fruit and distributed it to witness AR, witness AC, witness AG, and victim FH. After that, YY's lust arose from watching porn two days earlier. The perpetrator YY then ordered the three witnesses to go home while the FH victim was asked to stay in the garden. The perpetrator YY then took the victim FH to a quiet place. Arriving at a place that was considered deserted, the perpetrator YY then laid FH's victim in the bushes. The perpetrator YY then took off his pants and at the same time ordered the victim of FH to take off his pants. The perpetrator YY then inserted his penis into the vagina of the FH victim to release sperm.

After having intercourse with the FH victim, YY knew that the FH victim's mother had come to the location, so YY hid behind a tree. The FH victim's mother saw that the FH victim's pants were wet, so the FH victim's mother checked the FH victim's vagina. The perpetrator YY realized that the mother of the victim of FH could see her whereabouts and vice versa. Perpetrator YY also witnessed the victim of FH being interrogated and pulled by her mother and walked to the position of perpetrator YY so that a conversation broke out between them.

Mother of FH victim : *"Why are you hiding there, perpetrator YY."*

Perpetrator YY : *"I picked rambutan for the victims of FH."*

Mother of FH victim : *"What did you do to FH victim."*

Perpetrator YY : *"Didn't do anything auntie."*

After that, the victim of FH was brought home by his mother. Furthermore, the mother, father, and family of the FH victim reported the perpetrator YY to the Police.

#### 3.2.2. Analysis of the Articles that Became the Basis for the Panel of Judges' Considerations

The Panel of Juvenile Judges in Decision of the Malili District Court No. 2/Pid.Sus-Anak/2018/PN MII, where after considering, observing, and adjudicating that declaring the child as perpetrator YY, was legally and convincingly proven guilty of committing the crime of *"intercourse with minors"*, as stated in the primary indictment, namely based on Article 81 section (1) of Law No. 17 of 2016, regulates that:

*"Anyone who violates the provisions referred to in Article 76D shall be sentenced to a minimum imprisonment of 5 (five) years and a maximum of 15 (fifteen) years, and a maximum fine of Rp. 5,000,000,000.00 (five billion rupiahs)."*



Based on Article 76D of Law No. 17 of 2016, regulates that *“everyone is prohibited from using violence or threats of violence to force the child to have intercourse with him or with other people”*.

The above provisions have elements, among others:

- a. Each person;
- b. It is prohibited to use violence or threats of violence to force the child;
- c. Have intercourse with him or with other people.

The three elements above become the basis for consideration of the Juvenile Justice Panel in adjudicating a case. *First*, what is meant by the element “each person” is a legal subject who is capable of acting and able to legally account for his actions (*toerekeningsvatbaar*) which after the Panel of Juvenile Judges considers that:

*“The perpetrator YY was able to follow the entire trial process well, answer questions, and provide information smoothly without experiencing any problems. In addition, the perpetrator YY is competent or able to act and can be legally responsible for his actions.”*

From the considerations above, it can be said that the conviction of the Panel of Juvenile Judges on the fulfillment of the “each person” is a belief that has a basis.

*Second*, the element of “prohibited to use violence or threats of violence to force the child”, which after the Panel of Judges on the Child considered that:

*“The victim of FH felt pain and abrasions in the vagina and fear and trauma, according to the evidence from the Visum Et Repertum examination, with the conclusion that there were injuries from blunt objects.”*

From the considerations above, it can be said that the conviction of the Panel of Juvenile Judges on the fulfillment of the element of “prohibited to use violence or threats of violence to force the child” is a belief that has a basis.

*Third*, the element of “having intercourse with him or with other people”, which after the Panel of Judges of the Child considered that:

*“The perpetrator YY, admitted that he had laid the victim of FH in the bushes. The perpetrator YY took off his pants and at the same time ordered the victim of FH to take off his pants. The perpetrator YY finally inserted his penis into the vagina of the FH victim to release sperm.”*

From the considerations above, it can be said that the conviction of the Panel of Juvenile Judges on the fulfillment of the element of “having intercourse with him or with other people” is a belief that has a basis.

Because all the elements have been met, and during the trial, the child can answer all questions satisfactorily. In addition, children physically and mentally do not show things required by law to be reasons or justifications that must be released from lawsuits. Therefore, based on all the descriptions above, the perpetrator YY has a legal basis to be legally and convincingly proven to have committed a crime based on Article 81 section (1) of Law No. 17 of 2016.

### 3.3. Analysis of Child Protection as Criminal Act Perpetrators Based on Juridical Approach

As previously explained, children do not yet have the physical and psychological maturity to live independently. Therefore, children must be protected from all things that can harm both physically and mentally. This includes protecting children from pornography, as based on Article 1 number 2 of Law No. 17 of 2016, explains that:

*"Child protection is all activities to guarantee and protect children and their rights to live, grow, develop and participate optimally under human dignity and protection from violence and discrimination."*

From the above provisions, Indonesia is a country that recognizes children's rights and implements child protection from all aspects. Furthermore, based on Article 16 section (1) of Law No. 44 of 2008, regulates that:

*"The government, social institutions, educational institutions, religious institutions, families, and/or the community are obliged to provide guidance, assistance, and social recovery, physical and mental health for every child who is a victim or perpetrator of pornography."*

From the above provisions, children as perpetrators also have the right to protection. Especially if in the context of being a perpetrator of fornication and rape due to being stimulated by pornography, children are positioned in two statuses where children are perpetrators of criminal acts and victims of pornography itself. Furthermore, children do not yet have the physical and psychological maturity to live independently. Therefore, children as perpetrators must receive guidance, assistance, and social recovery, so that they can return to the right path and re-mingle into society like other children who do not commit a crime. This is also proven through the Decision of the Malili District Court No. 2/Pid.Sus-Anak/2018/PN Mll and its relation to the laws and regulations related to child protection, among others, are as follows.

#### 3.3.1. Law of the Republic of Indonesia Number 4 of 1979 on Children's Welfare

Protection of children from pornography is not expressly regulated in Law of the Republic of Indonesia Number 4 of 1979 on Children's Welfare (hereinafter referred to as Law No. 4 of 1979). However, this is implied in the provisions of children's rights, as based on Article 2 section (4) of Law No. 4 of 1979, regulates that *"the children have the right to protection from the environment that can harm or hinder their growth and development properly"*.

The above provisions relating to Decision of the Malili District Court No. 2/Pid.Sus-Anak/2018/PN Mll, where the Panel of Juvenile Judges considered other facts obtained at the trial where the statement of the parents of the victims of FH and the memorandum of defense of the attorney for the perpetrator YY explained that perpetrator YY has actually been marginalized because society has destroyed the home of perpetrator YY's parents. Things like this can cause psychological pressure that is detrimental to YY perpetrators. Therefore, the Panel of Juvenile Judges overruled the recommendations of the Correctional Center Community Advisor and the Public Prosecutor, which essentially stated that the perpetrator YY was sentenced to criminal conditions under supervision. The Panel of Juvenile Judges considered the demands of the Public Prosecutor, which in essence, the perpetrator YY was sentenced to a job training for 3 (three) months and carried out 5 (five) days a week at the Marsudi Putra Toddopuli Social Home in Makassar.

### 3.3.2. Law of the Republic of Indonesia Number 39 of 1999 on Human Rights

Protection of children from pornography is expressly regulated in Law of the Republic of Indonesia Number 39 of 1999 on Human Rights (hereinafter referred to as Law No. 39 of 1999). This is contained in the provisions of children's rights, as based on Article 60 section (2) of Law No. 39 of 1999, regulates that:

*"Every child has the right to seek, receive, and impart information as befits his/her intellectual capacity and age in the interests of his/her own development, insofar as this meets moral requirements."*

Article 66 section (4) of Law No. 39 of 1999, regulates that *"the children may be arrested, detained, or imprisoned only in accordance with prevailing law and only as a measure of last resort"*.

The above provisions relating to Decision of the Malili District Court No. 2/Pid.Sus-Anak/2018/PN Mll, in which the Panel of Judges of the Child considered other facts obtained at the trial where the perpetrator YY previously worked in oil palm plantations and mingled with adult workers. YY perpetrators are often invited to watch pornographic videos by adult workers using their cellphones. Therefore, the perpetrators of YY should also be kept away from using cell phones because they can store pornographic videos. Based on this condition, the Panel of Juvenile Judges considered that it was appropriate for the perpetrator YY to undergo a coaching punishment in an institution organized by the Government and the Marsudi Putra Toddopuli Social Home in Makassar.

### 3.3.3. Law of the Republic of Indonesia Number 17 of 2016 Child Protection

Protection of children from pornography is strictly regulated in Law No. 17 of 2016. This is contained in the provisions of children's rights and obligations, as based on Article 64 section (2) number 4 of Law No. 17 of 2016, regulates that *"Special protection for children in conflict with the law ... is carried out through the imposition of appropriate sanctions in the child's best interests"*.

The above provisions relating to Decision of the Malili District Court No. 2/Pid.Sus-Anak/2018/PN Mll, where the Panel of Juvenile Judges considered other facts obtained at the trial where the testimony of the perpetrator YY confirmed that the community had damaged the house he lived in. Therefore, it can be concluded that if perpetrator YY is still serving his sentence at the State Detention Center in Masamba, this is very risky for the condition and safety of perpetrator YY. In addition, the basis for consideration of the Panel of Judges for Children is based on the background and age of perpetrator YY, where currently perpetrator YY is still within the educational age limit. Even though the perpetrator YY is already in the productive age category, it is in the best interest of the perpetrator YY, and it is appropriate for the perpetrator YY to undergo criminal coaching in an institution organized by the Government and the Marsudi Putra Toddopuli Social Home in Makassar.

### 3.3.4. Law of the Republic of Indonesia Number 44 of 2008 on Pornography

Protection of children from pornography is expressly regulated in Law No. 44 of 2008. This is contained in the provisions on child protection, as based on Article 15 of Law No. 44 of 2008, regulates that *"everyone should protect children from the influence of pornography and prevent children's access to pornographic information"*.

Furthermore, based on Article 16 section (1) of Law No. 44 of 2008, regulates that:

*"The government, social institutions, educational institutions, religious institutions, families, and/or the community are obliged to provide guidance, assistance, and social recovery, physical and mental health for every child who is a victim or perpetrator of pornography."*

The above provisions are intended to prevent as early as possible the influence of pornography on children. Whereas, in the end, pornography has resulted in child victims and/or perpetrators, all relevant agencies must play an active role in physical and psychological recovery for the child.

Of course, prevention and/or recovery will be faster and more effective if all elements of society are given obligations and are responsible for their obligations. From this provision, the Panel of Juvenile Judges considered it appropriate and reasonable if legally the perpetrator YY to undergo criminal coaching in an institution organized by the Government and the Marsudi Putra Toddopuli Social Home in Makassar.

### **3.3.5. Law of the Republic of Indonesia Number 11 of 2012 on the Juvenile Criminal Justice System**

Protection of children from pornography is not expressly regulated in Law of the Republic of Indonesia Number 11 of 2012 on the Juvenile Criminal Justice System (hereinafter referred to as Law No. 11 of 2012). However, this is implied in the provisions of children's rights, as based on Article 3 letter g of Law No. 11 of 2012, regulates that *"every child in the criminal justice process has the right not to be arrested, detained, or imprisoned, except as a last resort and in the shortest possible time"*.

Furthermore, based on Article 80 section (3) of Law No. 11 of 2012, regulates that *"the guidance within the institution is carried out for a minimum of 3 (three) months and a maximum of 24 (twenty-four) months"*.

The above provisions relating to Decision of the Malili District Court No. 2/Pid.Sus-Anak/2018/PN MII, wherefrom all the considerations of the Panel of Juvenile Judges in deciding the criminal case of sexual intercourse committed by the perpetrator YY against the victim of FH. The Panel of Juvenile Judges sentenced perpetrator YY to criminal guidance in institutions organized by the Government for 1 (one) year, deducted from the detention period from the arrest period and 1 (one) year of job training at the Marsudi Putra Toddopuli Social Home in Makassar.

## **4. CONCLUSION**

Based on the description of the results and discussion, it can be concluded that several laws in Indonesia protect children as perpetrators of criminal act due to being stimulated by pornography. In this case, it consists of Law No. 4 of 1979 on Children's Welfare, Law No. 39 of 1999 on Human Rights, Law No. 17 of 2016 on Child Protection, Law No. 44 of 2008 on Pornography, and Law No. 11 of 2012 on the Juvenile Criminal Justice System. This can be seen from all the considerations of the Panel of Juvenile Judges in deciding the criminal case of sexual intercourse committed by the perpetrator YY against the victim of FH. The Panel of Juvenile Judges sentenced perpetrator YY to criminal guidance in institutions organized by the Government for 1 (one) year, deducted from the detention period from the arrest period and 1 (one) year of job training at the Marsudi Putra Toddopuli Social Home in Makassar. Based on this conclusion, it is hoped that law enforcers regarding the handling of children who commit criminal acts resulting from being stimulated by pornography can distinguish their treatment from criminal acts in general, such as theft. In addition, children who commit crimes due to being stimulated by pornography must also be accompanied by

a psychologist to ensure that the child's mental condition can return to normal. Assistance by religious leaders must also be done so that children can return to the right path and be blessed by God.

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